

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-15-05)
(February 2, 2016)

A report to the Flathead County Board of Adjustment regarding a request by Betsy Morrison for a variance to the front yard setback requirements found in Section 3.34.040(3)(A) Flathead County Zoning Regulations (FCZR). The variance request would apply to property located at 141 Viano Lane which is zoned West Valley (WV) and located within the West Valley Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the proposed variance on February 2, 2016 beginning at 6:00 pm in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed variance is specific to a property located within the advisory jurisdiction of the West Valley Land Use Advisory Committee. On January 26, 2016 at 7:00 pm at the Stillwater Grange located at 1370 Old Reseve Drive, Kalispell, MT, the West Valley Land Use Advisory Committee will hold a public meeting to review the variance request and make a recommendation to the Flathead County Board of Adjustment. This space is reserved for a summary of the Committee's discussion and recommendation.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on February 2, 2016 beginning at 6:00 pm in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

II. GENERAL INFORMATION

A. Application Personnel

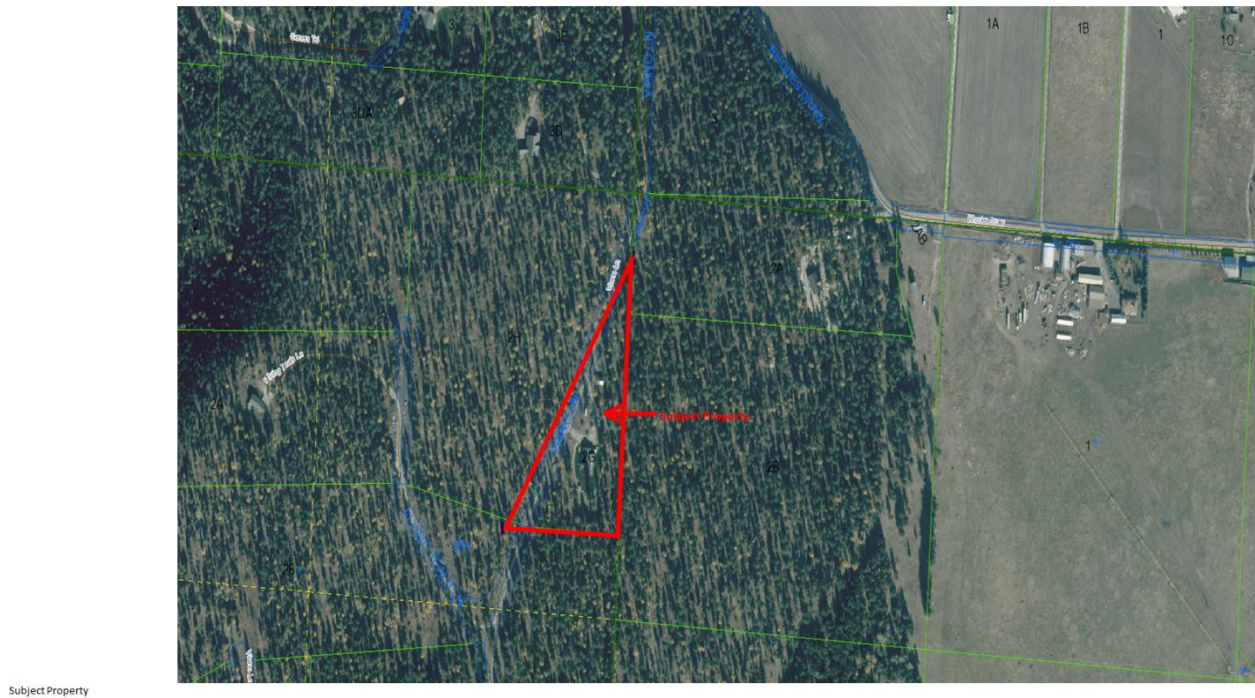
i. Landowner/Applicant(s)

Betsy Morrison
141 Viano Lane
Kalsipell, MT 59901

B. Property Location (for which a variance is being requested)

The subject property is approximately 3.5 acres and is located at 141 Viano Lane in Kalispell, MT. The property can be legally described as Tract 2G in the Northeast ¼ of Section 30, township 29 North, Range 22 West, P.M.M. Flathead County, Montana.

Figure 1: Aerial of the subject property (outlined in red)



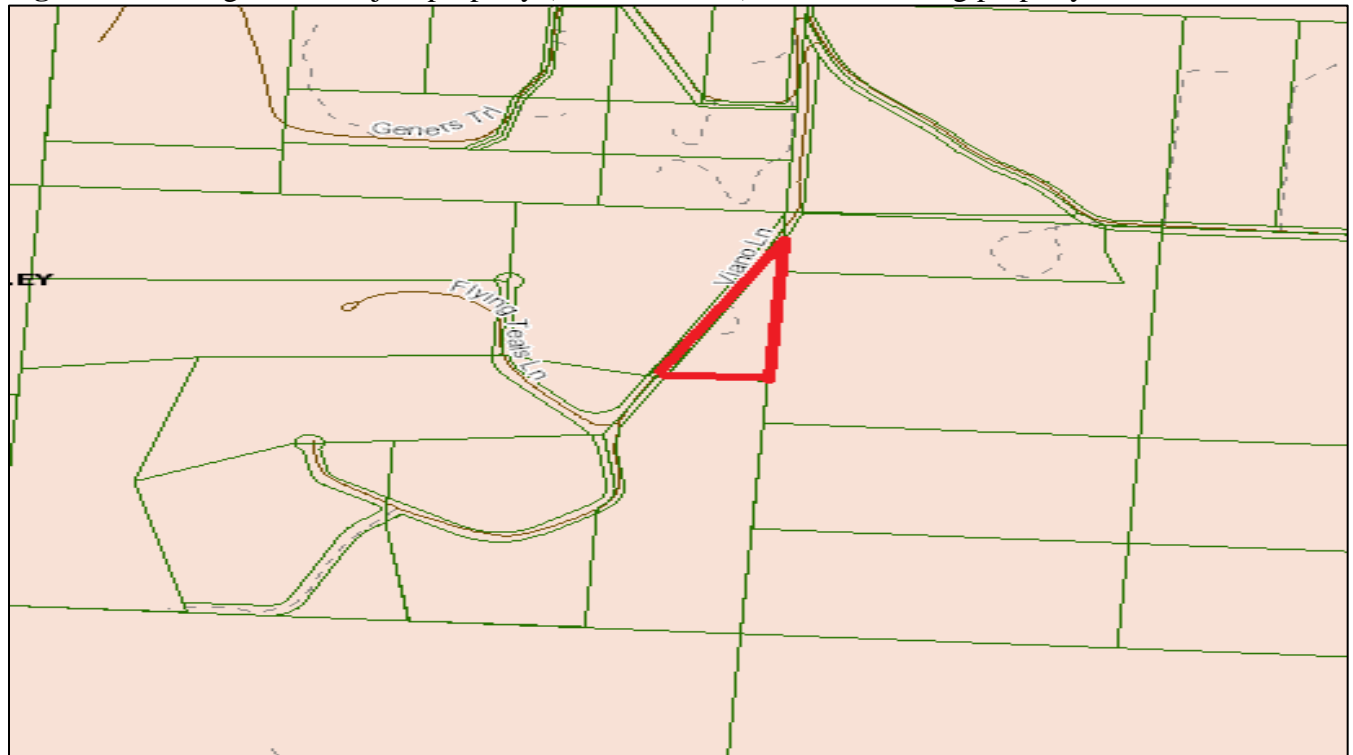
C. Existing Land Use(s) and Zoning

The subject property is located in the West Valley Zoning District. West Valley is defined as, “A district to promote orderly growth and development in the West Valley area consistent with the community vision statements as expressed by the text and map exhibits of the West Valley Neighborhood Plan.

D. Adjacent Land Use(s) and Zoning

The subject property is approximately in the middle of the West Valley District, a district over 36,000 acres in size. All of the adjacent properties are also in the West Valley District. The surrounding land uses consist of sparse residential development on large lots. The subject property along with the adjacent properties are heavily wooded. There is extensive agricultural uses in close proximity to the east.

Figure 2: Zoning of the subject property (outlined in red) and surrounding property

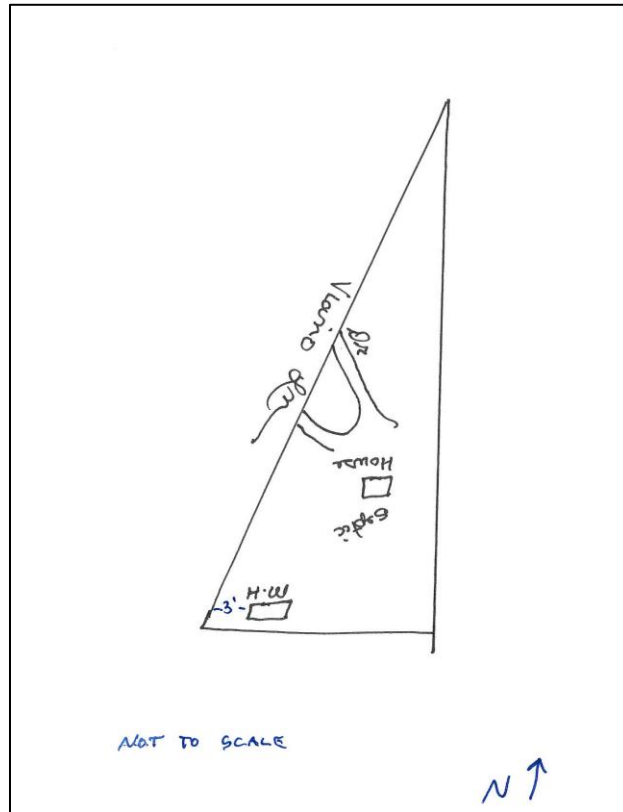


E. Summary of Request

The applicant is requesting this variance to allow the continued placement of a Class B manufactured home that encroaches into the front yard setback. Section 3.34.040(3)(A) requires that all structures be 20 feet from “any property line, road easement, or intermittent stream.” While the manufactured home is approximately 33 feet from the centerline of Viano Lane which is the applicant’s property line, it is only 3 feet from the edge of the 60-foot private road easement.

The manufactured home is being utilized as a family hardship dwelling which is a permitted use in the West Valley zoning district. While it is not clear exactly how long the structure will remain in this location, the applicant does state that it will be a temporary, short term use. The applicant further states that due to topographic constraints and the location of the septic drainfield on the property, the current location of the manufactured home is the minimum variance request that will alleviate the hardship of meeting the 20-foot setback requirement. Finally, the applicant states that the location of the manufactured home will not have adverse effects on surrounding properties.

Figure 3: Site Plan



F. Compliance with Public Notice Requirements

On or before January 18, 2016, notification will be mailed to adjacent property owners within 150 feet of the subject property. On or before January 18, 2016, legal notice of the public hearing will be published in the *Daily Interlake*.

G. Agency Referrals

Agency referrals were sent to agencies listed below regarding the variance request.

- Flathead City-County Health Department
 - Reason: The property is located within the department's jurisdiction.
- Flathead County Road and Bridge Department
 - Reason: The property is located within the department's jurisdiction.

III. COMMENTS RECEIVED

A. Public Comments

No written comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing at the Board of Adjustment hearing scheduled for February 2, 2016.

B. Agency Comments

The following is a summarized list of agency comments received as of the date of the completion of this staff report:

- Flathead Road and Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated December 28, 2015.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the Flathead County Zoning Regulations, what follows are review criteria for consideration of a variance and suggested findings of fact based on review of each criterion. Specifically, per Section 2.05.030 of the Flathead County Zoning Regulations, “No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case:

A. Strict compliance with the provisions of these regulations will:

i. Limit the reasonable use of property:

Strict compliance with the zoning regulations could limit the applicant’s ability to utilize this property for a family hardship dwelling which is a permitted use in the West Valley zoning district. The applicant states that due to the topography of the property and the existing development, including the septic drainfield, the temporary, short term placement of the family hardship dwelling cannot be practically set in a location that would meet the front setback. The applicant further stated that because this is a temporary placement, the existing location of the manufactured home allowed for the most minimal ground disturbance, including existing tree removal.

Finding #1- Strict compliance with the regulations could limit the reasonable use of the property because a family hardship dwelling is a permitted use in the West Valley zoning district and the topography, existing development, including the septic drainfield, and the existing vegetation necessitated placing the manufactured home in its current location.

ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district:

While it does not appear that any of the parcels in close proximity to the applicant’s currently have a family hardship dwelling, it should be noted that the contiguous parcels range in size between 9.5 acres and 30 acres in size. The subject property is only 3.5 net acres in size, leaving much less area on the property to set a manufactured home. In addition, the subject property has over 1,000 feet of road frontage that essentially increases the

setback requirement adjacent to Viano Lane by 30 feet. These factors coupled with the topography of the subject property and the existing development has the real potential of depriving this applicant the rights that could be enjoyed by nearby property owners who may need to develop a family hardship dwelling.

Finding #2—Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the district because the surrounding properties are much larger in size and appear not to face the kind of topographic challenges that the applicant's property faces.

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

As stated above, the subject property is 3.5 net acres in size and there are topographic challenges on the property. In addition, the property is triangular in shape that appears to limit the area in which the property can be developed. And while the applicant did have control over where the principal dwelling was development, the applicant did not anticipate needing to place a family hardship dwelling on the property during its initial development.

Finding #3—The alleged hardship appears to be attributable, in this situation, to lot size, lot shape and the topography of the property. These circumstances appear to be out of the control of the applicant.

C. The hardship is peculiar to the property.

The minimum lot size in the West Valley zoning district is one (1) acre. The subject property exceeds the minimum lot size; however, because of its triangular shape, the presence of topographical challenges, the extensive road frontage and the existing development, including the septic drainfield, the hardship appears to be peculiar to the subject property.

Finding #4—The alleged hardship appears to be peculiar to the subject property because of its relatively small size compared to adjacent property, its shape, the extensive road frontage and the topography.

D. The hardship was not created by the applicant.

The applicant purchased and developed the property without any knowledge of someday needing to place a family hardship dwelling on the property. The existing development, including the septic drainfield, appeared to take into consideration the topography as well as the size and the shape of the parcel. At this time, however, the applicant is having to address the size, shape and topography of the parcel that was not created by her.

Finding #5—The alleged hardship does not appear to be created by the applicant because the lot was created in its current shape and size prior to the applicant needing a family hardship dwelling.

E. The hardship is not economic (when a reasonable or viable alternative exists).

As stated above, the parcel was created and developed prior to needing a family hardship dwelling. Now that this temporary situation has required the hardship dwelling, there does not appear to be neither a reasonable or viable alternative location to set the manufacture home without extensive excavation work and without the removal established vegetation.

Finding #6—The hardship does not appear to be economic because, at this time and for this structure, no reasonable or viable alternative appears to exist. It appears unreasonable to require the applicant to make a considerable investment in excavation and to remove established vegetation for a temporary structure.

F. Granting the variance will not adversely affect the neighboring properties or the public.

The family hardship dwelling is current three (3) feet from the edge of the 60-foot road and utility easement associated with Viano Lane. Viano Lane is approximately 20 feet in width and is a gravel road. It also appears that the travel way is located in the center of the 60-foot easement which places the manufactured home approximately 23 feet from the edge of the road. Viano Lane provides access to a very limited number of residents so it appears any safety concerns with the structure being relatively close to the road easement are minimal. And because this is a temporary situation, granting this request should not adversely affect the neighboring properties or the public.

Finding #7—Granting the variance request would not appear to have a significant impact on the neighboring properties or the public because no written comments or complaints have been submitted, the variance is for the front setback and site distances and traffic would likely not be impacted.

G. The variance requested is the minimum variance which will alleviate the hardship.

The applicant states this is the minimum variance which will alleviate the hardship because of the topography and the existing vegetation. Because of the topography and the shape of the lot, setting the manufactured home parallel to Viano Lane would also require the removal of established vegetation and would also require additional excavation and fill. Any effort to minimize extensive excavation and the removal of established vegetation would require some kind of variance request.

Finding #8—The variance requested appears to be the minimum variance which would alleviate the alleged hardship because orienting the family hardship

dwelling on the parcel in any other direction would encounter issues with topography and it appears would require a variance to the side yard setback requirement.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

The applicant states that she is not asking for a “permanent privilege. This is a unique situation and short term.” Moreover, it would appear that all of the neighboring properties would not be as constrained in setting a family hardship dwelling because all of the parcels are much larger and are more regularly shaped than the applicant’s

Finding #9—Granting the variance would likely not confer a special privilege that is denied to other properties in the district because a family hardship dwelling is a permitted use in the West Valley zoning district and the surrounding properties are considerably larger and are more regularly shaped, making them more able to accommodate the setting of a temporary structure.

V. SUMMARY OF FINDINGS

1. Strict compliance with the regulations could limit the reasonable use of the property because a family hardship dwelling is a permitted use in the West Valley zoning district and the topography, existing development, including the septic drainfield, and the existing vegetation necessitated placing the manufactured home in its current location.
2. Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the district because the surrounding properties are much larger in size and appear not to face the kind of topographic challenges that the applicant’s property faces.
3. The alleged hardship appears to be attributable, in this situation, to lot size, lot shape and the topography of the property. These circumstances appear to be out of the control of the applicant.
4. The alleged hardship appears to be peculiar to the subject property because of its relatively small size compared to adjacent property, its shape, the extensive road frontage and the topography.
5. The alleged hardship does not appear to be created by the applicant because the lot was created in its current shape and size prior to the applicant needing a family hardship dwelling.
6. The hardship does not appear to be economic because, at this time and for this structure, no reasonable or viable alternative appears to exist. It appears unreasonable to require the applicant to make a considerable investment in excavation and to remove established vegetation for a temporary structure.
7. Granting the variance request would not appear to have a significant impact on the neighboring properties or the public because no written comments or complaints have been submitted, the variance is for the front setback and site distances and traffic would likely not be impacted.

8. The variance requested appears to be the minimum variance which would alleviate the alleged hardship because orienting the family hardship dwelling on the parcel in any other direction would encounter issues with topography and it appears would require a variance to the side yard setback requirement.
9. Granting the variance would likely not confer a special privilege that is denied to other properties in the district because a family hardship dwelling is a permitted use in the West Valley zoning district and the surrounding properties are considerably larger and are more regularly shaped, making them more able to accommodate the setting of a temporary structure.

VI. CONCLUSION

Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application. Upon review of this application, the request to allow for a family hardship dwelling set within the front yard setback is supported by the review criteria and the Findings of Fact listed above.

VII. CONDITIONS

(Reserved for the Board of Adjustments)

(Per Section 2.05.030(5) of the Flathead County Zoning Regulations, the Board of Adjustment may impose conditions that are, in its judgment, “necessary to promote the general provisions of these regulations.” If any conditions are recommended, they will be tied to the variance criterion and finding of fact on which they are based.)